

No. 13107

United States
Court of Appeals
For the Ninth Circuit.

BRUCE G. BARBER, District Director Immigration
and Naturalization Service,

Appellant,

vs.

LOPE M. VARLETA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court for the Northern District of California, Southern Division

No. 30281—Civil

LOPE M. VARLETA,

Plaintiff,

vs.

BRUCE G. BARBER,

Defendant.

DESIGNATION OF RECORD ON APPEAL
AND AGREED STATEMENT OF FACTS
UNDER RULE 76 OF TITLE 28, USCA,
FEDERAL RULES OF CIVIL PRO-
CEDURE

It Is Hereby Stipulated and agreed between the parties hereto, by their respective attorneys duly authorized, that the pertinent facts on appeal are as follows, and that this matter may be submitted to the United States Court of Appeals for the Ninth Circuit under Rule 76 of the Federal Rules of Civil Procedure, and that this statement shall constitute the designated record on appeal and the points to be relied upon:

Plaintiff was born at Pandan Antique, Philippine Islands, on September 25, 1914, and was admitted to the Hawaiian Islands for permanent residence in the year 1931, as a National of the United States. He arrived in the Continental United States March 22, 1935, and was excluded from admission to the United States on March 27, 1935, by a Board of

Special Inquiry, as a stowaway (39 Stat. 887, 8 USC 153). Plaintiff was placed aboard a steamship for deportation to the Hawaiian Islands but escaped from the vessel on April 6, 1935, and made his way into the Continental United States where he has resided since that date. The plaintiff has been physically present in the United States since April 6, 1935, except for his temporary absences in pursuit of his calling as a seaman aboard American vessels. The plaintiff last entered the United States from a foreign port on November 22, 1947, at Norfolk, Virginia, seeking admission as a resident alien seaman returning to the United States. On September 29, 1950, plaintiff was accorded a deportation hearing by a Hearing Examiner for the Immigration and Naturalization Service, and on November 29, 1950, a warrant for his deportation was issued charging that at the time of his last entry at Norfolk, Virginia, November 22, 1947, that the plaintiff was not in possession of a valid Immigration Visa and not exempted from the presentation thereof.

While in custody of the Immigration and Naturalization Service pending his deportation from the United States, Plaintiff personally filed on January 9, 1951, a Petition for Writ of Habeas Corpus, and an Order to Show Cause was filed returnable on January 3, 1951. A continuance was granted and a Return to Order to Show Cause and a Memorandum of Points and Authorities were filed in the United States District Court, San Francisco, California, on February 6, 1951. Points and

Authorities were also filed by Counsel for plaintiff on that date, and on February 7, 1951, the matter was argued before the Honorable George B. Harris, United States District Judge in the United States District Court, San Francisco, California, and submitted.

The sole questions of law to be determined in this matter were:

(1) Whether Sections 8 A (2) of the Philippine Independence Act of 1934, was nullified on July 4, 1946, by the operation of Section 14 of that Act, after Presidential Proclamation No. 2695 was signed by the President of the United States, surrendering sovereignty of the United States over the Philippine Islands;

(2) Was the effective date of the Philippine Independence Act May 1, 1934; and

(3) Was the plaintiff required by law to present an Immigration Visa upon the occasion of his return to the United States as a bona fide seaman, at Norfolk, Virginia, on November 22, 1947?

The District Court, in a Memorandum Opinion dated June 15, 1951, held that Section 8 A (2) of the Philippine Independence Act of 1934, became a nullity on July 4, 1946, and that, therefore, plaintiff was not required to present an Immigration Visa at the time of his return to the United States as a seaman, at Norfolk, Virginia, on November 22, 1947. The Court concluded that the plaintiff was illegally restrained by the defendant.

Attached hereto and made a part of this Designation of Record on Appeal are the following:

- (1) Copy of Court's Memorandum Opinion.
- (2) Copy of the Final Decree Including Findings of Fact and Conclusions of Law.
- (3) Copy of the Notice of Appeal filed by Defendant June 21, 1951.
- (4) Copy of Order Extending Time to Appeal.

Statement of Points to Be Relied Upon
by Defendant

(1) The Court erred in finding that the plaintiff is a lawful permanent resident of the United States.

(2) That Court erred in finding that the deportation order of the Immigration and Naturalization Service, ordering the plaintiff's return to the Philippine Islands was erroneous.

(3) That the Court erred in finding that Section 8 A (2) of the Philippine Independence Act of 1934 is no longer effective.

CHAUNCEY TRAMUTOLO,
United States Attorney,

By /s/ EDGAR R. BONSTALL,
Assistant United States
Attorney,
Attorney for Defendant.

/s/ JOSEPH S. HERTOGS,
Attorney for Plaintiff.

Dated: September 18th, 1951.

Approved:

/s/ GEORGE B. HARRIS,

Judge, United States District
Court.

[Endorsed]: Filed September 18, 1951.

[Title of District Court and Cause.]

MEMORANDUM OPINION

Petitioner, a native of the Philippine Islands, entered the Hawaiian Islands for permanent residence in 1931. On March 22, 1935, via the steamship Hanover, he entered the United States, in which country he has continuously resided except for periods of employment aboard American owned vessels.

Upon the return of petitioner's vessel from a foreign port on November 22, 1947, he was detained by the Immigration and Naturalization Service. Hearings by the latter body culminated in an order of deportation, directing petitioner to be sent to the Philippine Islands. Such order was based on the ground that he was an immigrant, not in possession of an unexpired immigration visa.

Petitioner contends that he is a legal resident of the United States and that defendant is acting in violation of the law in ordering his deportation. Petitioner has exhausted his administrative remedies and is now entitled to a consideration of his case

by means of the present petition for Writ of Habeas Corpus. *Trinler v. Carusi*, 166 F. 2d. 457.

In order to determine his status, it is necessary for the Court to review the recent history of the Philippine Islands. During the period that the United States exercised control of the Islands, children born there were entitled to the protection of the United States. Citizens of the Philippine Islands were not deemed to be aliens. *Gonzales v. Williams*, 192 U. S. 13. They owed allegiance to the United States. *Toyata v. United States*, 268, U. S. 402.

Under the legal status of his land of birth, petitioner was a national of the United States. He enjoyed such status at the time of his admission to Hawaii in 1931. Furthermore, it continued when he made his original entry into the continental United States in March of 1935. *Application of Viloria*, 84 F. Supp. 584; *Cabebe v. Acheson*, 183 F. 2d 795.

Not until July 4, 1946, when the Philippine Islands achieved their independence did petitioner become an alien. Such change of status, however, did not deprive petitioner of his lawful residence in the Hawaiian Islands. As a permanent resident alien of Hawaii, petitioner was authorized to enter the United States without having in his possession an immigration visa. 8 USCA 213 (b). Moreover, petitioner, as a seaman, was entitled to the benefits of 8 C.F.R. 175.45(b) which reads as follows:

“Immigrants required to present passports but not permits to enter. Aliens who are lawful

permanent residents of the United States, and who fall within the following categories are exempt from the requirements of presenting permits to enter, inasmuch as the requirement thereof is waived, but must present passports:

(b) An alien, occupationally a seaman, who is returning in accordance with the terms of the articles of outward voyage, . . . ”

Since plaintiff has resided continuously in the United States and Hawaii since the time of his original admission for permanent residence in 1931 he is covered by the above quoted section of Title 8 of the Code of Federal Regulations. It should be noted that under the Immigration Act of 1924, Section 28(a), “The term ‘United States,’ when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, . . . ” 8 USCA 224.

The single obstacle to petitioner’s admission raised by the Government is to be found in Section 8(a) (2) of the Act of March 24, 1934, whereby the basis for Philippine Independence was laid (48 Stat. 456). Such section reads in part as follows:

“Citizens of the Philippine Islands who are not citizens of the United States shall not be admitted to the continental United States from the Territory of Hawaii (whether entering such territory before or after the effective date of this section) . . . ”

From the enactment of this provision in the Philippine Independence Act, until 1946, when com-

plete independence was achieved by Presidential Proclamation (Proclamation 2695, July 4, 1946, 60 Stat. 1352, 11 F.R. 7517), petitioner was ineligible to enter the United States without a visa.

Commencing July 4, 1946, a petitioner's status was defined by Section 14 of the Philippine Independence Act which reads as follows:

“Upon final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all provisions thereto relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.” 48 U.S.C.A. 1244.

In accordance with this section, the provisions of the Philippine Independence Act of 1934 were superseded by the immigration regulations applicable to all foreign countries. As a lawful resident alien of the Hawaiian Islands petitioner was eligible to enter the United States without a visa.¹ 48 USCA 1238. Any special restrictions placed on petitioner's movement between Hawaii and the continental United States were removed in 1946 and Section 8(a) (2) became ineffective.

The ruling of the Immigration and Naturalization Service in requiring such visa was erroneous as a matter of law and constituted a denial of due process

¹Persons in petitioners category have actually been admitted to citizenship in this Court. (Petition of Mary Almarza Bernal, #88505; Petition of Eusibio Aquino Hafalla, #84671; 8 USCA 703(a).

of law, contrary to the Fifth Amendment to the Constitution of the United States. *Kessler v. Strecker*, 307 U.S. 22. Petitioner is entitled to his release forthwith.

In view of the Court's conclusion that petitioner is eligible for admission into the United States without obtaining a visa, it becomes unnecessary to pass upon a second ground raised by petitioner as a basis for establishing his eligibility for admission. He contends that at the time of his entry into the continental United States on March 22, 1935, the Philippine Independence Act of March 24, 1934 (48 Stat. 456), had not yet become effective and therefore the language of Section 8(a) (2) of that Act did not cover his status. In passing, it should be noted that there are several interpretations as to the effective date of the Philippine Independence Act. These dates range from May 1, 1934 (Hackworth, Digest of International Law, Vol. 1, p. 496) through May 14, 1935 (*Del Guercio v. Cabot*, 161 F.2d 559 (9th Cir.), to November 15, 1935 (*Cabebe v. Acheson*, 183 F. 2d 795).

Petitioner shall prepare Findings of Fact and Conclusions of Law in accordance with the foregoing.

Dated June 15, 1951.

GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed June 15, 1951.

In the United States District Court for the
Northern District of California, Southern Division
No. 30281

LOPE M. VARLETA,

Plaintiff,

vs.

BRUCE G. BARBER, District Director, Immigra-
tion and Naturalization Service,
Defendant.

FINAL DECREE

This matter having come on to be heard before the undersigned judge of the above-entitled court, Joseph S. Hertogs appearing as attorney for the plaintiff above named, and Frank J. Hennessy, United States Attorney for the Northern District of California, and Edgar R. Bonsall, Assistant United States Attorney, appearing as attorneys for the defendant above named, and the Court having heard the evidence introduced by both parties, considered arguments, statements, and briefs of counsel, and having fully considered the matter, and the Court being fully advised in the premises, hereby makes the following:

Findings of Fact

1. That the petitioner is a native and citizen of the Philippine Islands.
2. That the petitioner was admitted to the Territory of Hawaii for permanent residence in 1931.

3. That at the time of petitioner's admission to the Territory of Hawaii for permanent residence in 1931 he was a national of the United States.

4. That the petitioner entered continental United States on March 22, 1935.

5. That the petitioner has resided continuously in the continental United States since March 22, 1935, except for periods of employment as a seaman on American owned vessels.

6. That the petitioner last returned to the United States from a foreign port as a seaman on an American vessel on November 22, 1947.

7. That the petitioner has been ordered deported to the Philippine Islands as an immigrant, not in possession of an unexpired immigration visa.

8. That the petitioner is presently detained by the Immigration and Naturalization Service.

9. That the petitioner has exhausted his administrative remedies.

10. That the petitioner ceased to be a national of the United States on July 4, 1946.

11. That Section 8(a) (2) of the Philippine Independence Act of 1934 became ineffective on July 4, 1946.

12. That commencing on July 4, 1946, petitioner's status under the immigration laws of the United States was defined by Section 14 of the Philippine Independence Act of 1934.

13. That the petitioner on November 22, 1947, was eligible to enter the United States without an unexpired immigration visa.

Conclusions of Law

1. That the petitioner is a lawful permanent resident of the United States.

2. That the decision of the Immigration and Naturalization Service, ordering the petitioner deported from the United States to the Philippine Islands, was erroneous and constitutes a denial of due process of law.

3. That the petitioner is illegally restrained of his liberty by the defendant.

Now Therefore, by reason of the foregoing Findings of Fact and Conclusions of Law, it is,

Ordered, Adjudged and Decreed, that the petitioner be discharged from custody by the respondent forthwith.

Dated this 19th day of June, 1951.

GEORGE B. HARRIS,

United States District Judge.

Approved as to form.

EDGAR R. BONSALE,

Assistant United States

Attorney.

[Endorsed]: Filed June 19, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given That

Bruce G. Barber, District Director of the United States Immigration and Naturalization Service, as defendant in the above action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Final Decree in the above-entitled case entered June 19, 1951, in the United States District Court of California, in the Northern District of the Southern Division and from the whole of said judgment and each and every part thereof on questions of law.

CHAUNCEY TRAMUTOLO,
United States Attorney.

By /s/ EDGAR R. BONSTALL,
Assistant U. S. Attorney.

[Endorsed]: Filed June 21, 1951.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND DOCKETING
THE ACTION

The defendant herein having filed Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment made and entered herein June 20, 1951, now upon the

application of said defendant and appellant, appearing by Edgar R. Bonsall, Assistant United States Attorney for the Northern District of California, and Good Cause Appearing Therefor, it is hereby Ordered that said defendant and appellant have and hereby is given to and including September 18, 1951, for filing the record on appeal and docketing the action with said Appellate Court.

Dated August 29th, 1951.

GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed August 29, 1951.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND DOCKETING
THE ACTION

The defendant herein having filed Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment made and entered herein June 20, 1951, now upon the application of said defendant and appellant, appearing by Edgar R. Bonsall, Assistant United States Attorney for the Northern District of California, and Good Cause Appearing Therefor, it is hereby Ordered that said defendant and appellant have and hereby is given to and including Septem-

ber 19, 1951, for filing the record on appeal and docketing the action with said Appellate Court.

Dated September 19th, 1951.

/s/ GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed September 19, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing documents, to wit:

Designation of record on appeal and agreed statement of facts under Rule 76 of Title 28, USCA, Federal Rules of Civil Procedure;

Order extending time to file and docket record on appeal (filed September 19, 1951)

are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as stipulated by the attorneys for Appellant and Appellee.

In Witness Whereof I have hereunto set my hand

and affixed the seal of said District Court this 19th day of September, 1951.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ C. W. SMYTHE,
Deputy Clerk.

[Endorsed]: No. 13107. United States Court of Appeals for the Ninth Circuit. Bruce G. Barber, District Director Immigration and Naturalization Service, Appellant, vs. Lope M. Varleta, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed September 19, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13,107

BRUCE G. BARBER, District Director, Immigration
and Naturalization Service,
Defendant-Appellant,

vs.

LOPE M. VARLETA,
Plaintiff-Appellee.

DESIGNATION OF RECORD ON APPEAL
AND STATEMENT OF POINTS

Pursuant to the provisions of Rule 19(6), Chauncey Tramutolo, United States Attorney for the Northern District of California, and Edgar R. Bonsall, Assistant United States Attorney, counsel for defendant-appellant, hereby adopt the designation of record on appeal and statement of points to be relied upon, as set forth in their statement filed with the United States District Court on September 18, 1951.

Dated September 24, 1951.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney.

/s/ EDGAR R. BONSTALL,
Assistant United States Attorney, Counsel for Defendant-Appellant.

[Endorsed]: Filed September 24, 1951.

